THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION Nos.11881 and 13106 of 2005

Dated:07.07.2006

WRIT PETITION No.11881 of 2005

Between:

Sure Sundaramma and others.

…Petitioners

and

Dist.Collector, Chittoor District and others.

…Respondents

WRIT PETITION No.13106 of 2005

Between:

M.Suresh Kumar and others.

…Petitioners

and

Govt. of A.P., Rep.by its Principal Secretary, Revenue Department, Secretariat, Hyderabad, and others.

…Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION Nos.11881 and 13106 of 2005

COMMON ORDER:

In these two writ petitions the dispute is in relation to the land admeasuring Acs.2.54 cents in Survey No.494/4 situated at Avilala Village of Tirupathi Rural Mandal, Chittoor District (hereinafter called, the subject land). The subject land is a Government land. It appears the same was assigned way back on 25.09.1954 to one Sure Chinna Nagaiah. He sold the land to one Parlapalli Chengamma, W/o.Krishna Reddy of Mallamgunta Village, who in turn alienated the same in favour of Bhagya Laxmi, W/o.Ugander, under a registered sale deed dated 10.07.1995. She divided the land into house plots

and sold the plots to various persons during 1995, 1996 and 1998 who, after purchase, were allegedly in possession of the property.

The petitioners in W.P.No.11881 of 2005 claim to be the grand children of Chinna Nagaiah. When there was an attempt by some third parties to manipulate the records, they approached the Mandal Revenue Officer, Tirupathi Rural, for certified copies of the revenue records. They allege that at that stage, a copy of the proceedings in D.Dis.No.445/87, dated 24.08.1987, was given to them on 27.08.2004. As the said proceedings purports to cancel the assignment in respect of the land in Survey Nos.494/4, 495/1 and 495/2 of Avilala Village, they filed the writ petition. They seek a writ of mandamus declaring the action of the respondents in trying to dispossess them for the purpose of trying to assign the land to others, as illegal and arbitrary. One Parlapalli Chengamma sold the land to various other persons. Nine such persons filed W.P.No.13106 of 2005. It is their case that while they were in possession of the land some land grabbers with the help of Officials tried to dispossess them for the purpose of Rajiv Gruhakalpa Scheme without due process of law. Therefore, they filed the second writ petition seeking a writ of mandamus declaring the action of the respondents in trying to dispossess them as illegal and arbitrary and for a consequential direction not to interfere with their possession.

Along with their writ petition, the legal heirs of Chinna Nagaiah also filed W.P.M.P.No.15136 of 2005 seeking an interim direction to the respondents not to interfere with their possession. This Court passed such orders on 08.06.2005 in the said W.P.M.P. Again when W.P.No.13106 of 2005 came up for admission, while admitting the writ petition, this Court passed interim directions in W.P.M.P.No.16650 of 2005 on 21.06.2005 directing the respondents not to interfere with the possession and enjoyment of the petitioners. The petitioners filed C.C.No.351 of 2006 alleging that while the interim orders are in force, on 02.03.2006, the District Manager and the Assistant Engineer of the A.P.State Housing Corporation (for short 'the Housing Corporation') performed the Bhoomi Pooja, and that in spite of sending telegrams on 03.03.2006, they did not abate the violation of the Court orders. When this Contempt Case was listed before this Court on 16.06.2006, it was brought to the notice of this Court that the respondents moved W.V.M.P.No.2294 of 2005 in W.P.No.13106 of 2005. Therefore, the matters were directed to be listed together. As a short point is involved in both the writ petitions, the matters are heard together and are being disposed of when W.V.M.Ps are taken up.

In the counter affidavit filed on behalf of the respondents the Mandal Revenue Officer, Tirupathi Rural, admits that the land was assigned to Sure Chinna Nagaiah in 1954 and that he sold the land to Parlapalli Chengamma under registered sale deed, who in turn sold

the land to Bhagya Laxmi. It is alleged that the Mandal Revenue Officer, Tirupathi Rural, cancelled the assignment made in favour of the Chinna Nagaiah by proceedings dated 24.08.1987, and thereafter Bhagya Laxmi alienated the property, though she was not in possession of the property. For this reason, the respondents contend that the sales in favour of the petitioners in W.P.No.13106 of 2005 are invalid. The writ petition is also opposed on the ground that since 1997 the land was in possession of the Government, which was allotted to the Housing Corporation and possession was handed over on 28.05.2005 for construction of houses under Rajiv Gruha Kalpa Scheme. The respondents also filed W.V.M.P.No.1529 of 2005 in W.P.No.11881 of 2005 making similar allegations. The petitioners have also filed reply affidavit denying various allegations made in the counter affidavits.

The learned Counsel for the petitioners in the writ petitions submit that when the Mandal Revenue officer was aware that the original assignee sold the land to others, and subsequently, the said land was sold to Bhagya Laxmi, who divided the land into house plots and transferred to others for valuable consideration, without giving any notice, the petitioners were sought to be dispossessed, which is illegal. Alternatively, it is the submission of the learned Counsel for the petitioners that a copy of the impugned order was not even marked to the original assignee or his legal heirs and was sent to a wrong person, namely Sure Chinna Nagaiah, and therefore the entire action is unfair. The petitioners assert that after purchase of the house sites from Bhagya Laxmi, they are in possession of the property and that they were never dispossessed.

It is no doubt true that as alleged by the respondents, the assignment made in favour of Chinna Nagaiah was cancelled on 24.08.1987. Though Bhagya Laxmi or her Vendees are not parties at the relevant time, they can still collaterally challenge the cancellation proceedings. The short question, therefore, is whether there was a valid cancellation for the assignment made to Chinna Nagaiah?

The proceedings bearing D.Dis.No.445/87, dated 24.08.1987, by the Mandal Revenue officer, reads as under.

D.Dis/445/87 Dt:24.08.87 Mandal Revenue Office,

Tirupathi (Rural).

Proceedings of the Mandal Revenue Officer
Present Sri.M.Ramakrishnaiah.

Sub:- Assignment –Tirupathi (Rural) Mandal – Avilala Village – S.Nos.494/4, 495/1-D.K.T pattas issued – Cancellation orders issued –

Regarding.

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O R D E R:

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An extent of 7.64 acres of A.W.D land in S.No.494/4, 495/1, 2 of Avilala village has been assigned to the following persons. The assignees have not cultivated the lands granted to them till to date. They have violated the conditions laid down in the D.K.T patta. Hence the DKT pattas granted to them are here by cancelled with effect from 24.09.1987.

Sl.No.	Name of the DKT holder	S.No.	Extent Assigned
1.	Sura Chinna Chengaiah	494/4	2.54 Acres
2.	Durgasamduram Gangaiah	495/1	3.00 Acres
3.	Karavadi Cheeralaiah	495/2	2.01 Acres
		Total	7.64

Sd/-XXX 24.8.87
Mandal Revenue Officer,
Tirupathi (Rural).

To
The Individuals.

By no stretch of reasoning the above proceedings can be called a legal proceedings. There are two reasons for this. Admittedly, the assignment was made in favour of Chinna Nagaiah, but the proceedings nowhere refer to any notice to Chinna Nagaiah or Parlepalli Chengamma to whom Chinna Nagaiah sold the property. Secondly, by the said proceedings the assignment of the land admeasuring Acs.2.54 cents in Survey No.494/4 made in favour of Sure Chinna Chengaiah was cancelled. It is nobody's case that Sure Chinna Chengaiah was assigned any land. The said order is without application of mind and incorrect. Thirdly, whenever there is a contravention of subsection (2) of Section 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act'), Rule 3 of the Andhra Pradesh Assigned lands (Prohibition of Transfers) Rules, 1977 (for short 'the Rules'), requires the authorized Officer to issue notice in Form No.1 to the persons who acquired any assigned land in contravention of Section 3(2) of the Act. A reading of Form No.1 of the Rules would show that a notice under Rule 3 of the Rules is required to be given to every person who is found to be in occupation of the assigned land in contravention of Section 3(2) of the Act. Notice was not given to the original assignee or the purchaser from the assignee, Parlepalli Chengamma. Therefore, the same does

not in any manner amount to a valid order or valid cancellation.

The petitioners in W.P.No.13106 of 2005 have filed the Xerox copies of the registered sale deeds under which they purchased the property from Bhagya Laxmi. When a question of possession arises, every purchaser under sale deed is entitled to take recourse to the presumption that possession follows the title even if there is scanty evidence of possession. In this case, the said presumption is attracted. This Court, however, hastens to add that the certificate of handing over possession under which the Mandal Revenue Officer, Tirupathi, handed over possession to the District Manager, Housing Corporation, carries with it a presumption that all Government Orders are validly passed. But the petitioners by producing the relevant copies of the sale deeds have dislodged the presumption. In this background, having regard to the orders proposed, this Court cannot conclusively determine the fact regarding possession.

In the result, for the above reasons, these writ petitions are disposed of in the following manner.

Notwithstanding the alleged cancellation order dated 24.08.1987, the Mandal Revenue Officer shall issue notices to all the persons and others who purchased the property either from Chengamma or Bhagya Laxmi and after hearing their objections take necessary action in the matter. The claim of the legal heirs of the original assignee, Chinna Nagaiah, may also be considered in accordance with law. Till this exercise is completed, the parties to these proceedings or the parties claiming through them shall maintain *status quo*. There shall be no order as to costs.

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(V.V.S.RAO, J)

07.07.2006

Note: Issue C.C in one week.

B/o.

vs